

### Appendix.

Sections 16, 19, 20, 27, of the Act of 1905 (15 U. S. C. A. §§96, 99, 100 and 106) read as follows:

*§96. Evidence of ownership; infringement, and damages therefor.*

“The registration of a trade-mark under the provisions of this subdivision of this chapter shall be prima facie evidence of ownership. Any person who shall, without the consent of the owner thereof, reproduce, counterfeit, copy, or colorably imitate any such trade-mark and affix the same to merchandise of substantially the same descriptive properties as those set forth in the registration, or to labels, signs, prints, packages, wrappers, or receptacles intended to be used upon or in connection with the sale of merchandise of substantially the same descriptive properties as those set forth in such registration, and shall use, or shall have used, such reproduction, counterfeit, copy, or colorable imitation, in commerce among the several States, or with a foreign nation, or with the Indian tribes, shall be liable to an action for damages therefor at the suit of the owner thereof; and whenever in any such action a verdict is rendered for the plaintiff, the court may enter judgment therein for any sum above the amount found by the verdict as the actual damages, according to the circumstances of the case, not exceeding three times the amount of such verdict, together with the costs. Feb. 20, 1905, c. 592, §16, 33 Stat. 728.”

*“§99. Injunctions; recovery and assessment of damages.*

“The several courts vested with jurisdiction of cases arising under this subdivision of this chapter shall have power to grant injunctions, according to

the course and principles of equity, to prevent the violation of any right of the owner of a trade-mark registered under said subdivision, on such terms as the court may deem reasonable; and upon a decree being rendered in any such case for wrongful use of a trade-mark the complainant shall be entitled to recover, in addition to the profits to be accounted for by the defendant, the damages the complainant has sustained thereby, and the court shall assess the same or cause the same to be assessed under its direction. The court shall have the same power to increase such damages, in its discretion, as is given by section 96 of this chapter for increasing damages found by verdict in actions of the law; and in assessing profits the plaintiff shall be required to prove defendant's sales only; defendant must prove all elements of cost which are claimed. Feb. 20, 1905, c. 592, §19, 33 Stat. 729."

*"§100. Destruction of infringing labels; service of injunction, and proceedings for enforcement.*

"In any case involving the right to a trade-mark registered in accordance with the provisions of this subdivision of this chapter, in which the verdict has been found for the plaintiff, or an injunction issued, the court may order that all labels, signs, prints, packages, wrappers, or receptacles in the possession of the defendant, bearing the trade-mark of the plaintiff or complainant, or any reproduction, counterfeit, copy, or colorable imitation thereof, shall be delivered up and destroyed. Any injunction that may be granted upon hearing, after notice to the defendant, to prevent the violation of any right of the owner of a trade-mark registered in accordance with the provisions of this subdivision of this chapter, by any district court of the United States, or by a judge thereof, may be served on the parties against whom such injunction may be granted anywhere in the United States where they may be found,

and shall be operative, and may be enforced by proceedings to punish for contempt, or otherwise, by the court by which such injunction was granted, or by any other district court, or judge thereof, in the United States, or by the Supreme Court of the District of Columbia, or a judge thereof. The said courts, or judges thereof, shall have jurisdiction to enforce said injunction, as herein provided, as fully as if the injunction had been granted by the district court in which it is sought to be enforced. The clerk of the court or judge granting the injunction shall, when required to do so by the court before which application to enforce said injunction is made, transfer without delay to said court a certified copy of all the papers on which the said injunction was granted that are on file in his office. Feb. 20, 1905, c. 592, §20, 33 Stat. 729; Mar. 3, 1911 c. 231, §291, 36 Stat. 1167; June 25, 1936, c. 804, 49 Stat. 1921."

"§106. *Articles imported, simulating trade name or trade-mark, not admitted to entry.*

No article of imported merchandise which shall copy or simulate the name of any domestic manufacture, or manufacturer or trader, or of any manufacturer or trader located in any foreign country which, by treaty, convention, or law affords similar privileges to citizens of the United States, or which shall copy or simulate a trade-mark registered in accordance with the provisions of this subdivision of this chapter, or shall bear a name or mark calculated to induce the public to believe that the article is manufactured in the United States, or that it is manufactured in any foreign country or locality other than the country or locality in which it is in fact manufactured, shall be admitted to entry at any customhouse of the United States; and, in order to aid the officers of the customs in enforcing this prohibition, any domestic manufacturer or trader, and any foreign manufacturer or trader, who is entitled

under the provisions of a treaty, convention, declaration, or agreement between the United States and any foreign country to the advantages afforded by law to citizens of the United States in respect to trade-marks and commercial names, may require his name and residence, and the name of the locality in which his goods are manufactured, and a copy of the certificate of registration of his trade-mark, issued in accordance with the provisions of this subdivision of this chapter, to be recorded in books which shall be kept for this purpose in the Department of the Treasury, under such regulations as the Secretary of the Treasury shall prescribe, and may furnish to the department facsimiles of his name, the name of the locality in which his goods are manufactured, or of his registered trade-mark; and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer of customs. Feb. 20, 1905, c. 592, §27, 33 Stat. 730."

Section 526 of the Tariff Act of 1930 (19 U. S. C. A. §1526).

"§1526. *Merchandise bearing American trade-mark—importation prohibited.*

(a) It shall be unlawful to import into the United States any merchandise of foreign manufacture if such merchandise, or the label, sign, print, package, wrapper, or receptacle, bears a trade-mark owned by a citizen of, or by a corporation or association created or organized within, the United States, and registered in the Patent Office by a person domiciled in the United States, under the provisions of sections 81 to 109 of Title 15, and if a copy of the certificate of registration of such trade-mark is filed with the Secretary of the Treasury, in the manner provided in section 106 of said Title 15, unless written consent

of the owner of such trade-mark is produced at the time of making entry.

#### SEIZURE AND FORFEITURE

(b) Any such merchandise imported into the United States in violation of the provisions of this section shall be subject to seizure and forfeiture for violation of the customs laws.

#### INJUNCTION AND DAMAGES

(c) Any person dealing in any such merchandise may be enjoined from dealing therein within the United States or may be required to export or destroy such merchandise or to remove or obliterate such trade-mark and shall be liable for the same damages and profits provided for wrongful use of a trade-mark, under the provisions of such sections 81 to 109 of Title 15. (June 17, 1930, c. 497, Title IV, §526, 46 Stat. 741.)”

Excerpts from the U. S. Customs Regulations of 1943.\*

“11.14 *Trade-marks and trade names; prohibition of importation.*—(a) The importation of merchandise of foreign or domestic manufacture is prohibited if such merchandise bears a name or mark which copies or simulates a trade-mark or trade name entitled to the protection of the Trade-Mark Act of February 20, 1905 (33 Stat. 724; 15 U. S. C. ch. 3), or the Trade-Mark Act of March 19, 1920 (41 Stat. 533; 15 U. S. C. ch. 3), unless such merchandise is imported by or for the account of, or with the written consent of, the owner of the protected trade-mark or trade name.

(b) A name or mark (including a name or mark which is a genuine trade-mark or trade name in a

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\* The Customs Regulations for prior years contained substantially identical provisions.

foreign country) on an article of foreign manufacture identical with a trade-mark or trade name protected by the trade-mark laws of the United States, as well as a name or mark on an article of foreign or domestic manufacture counterfeiting such protected trade-mark or trade name, or so resembling such protected trade-mark or trade name as to be likely to cause confusion or mistake in the minds of the public or to deceive purchasers, shall be deemed for the purposes of the regulations in this part to copy or simulate such protected trade-mark or trade name. However, merchandise manufactured or sold in a foreign country under a trade-mark or trade name, which trade-mark is registered and recorded, or which trade name is recorded under the trade-mark laws of the United States, shall not be deemed for the purpose of the regulations in this part to copy or simulate such United States trade-mark or trade name if such foreign trade-mark or trade name and such United States trade-mark or trade name are owned by the same person, partnership, association, or corporation. (Secs. 526, 624, 46 Stat. 741, 759; sec. 27, 33 Stat. 730; sec. 3, 34 Stat. 169; sec. 18, 49 Stat. 1811, R. S. 161; 19 U. S. C. 1624, 15 U. S. C. 106, 132, 48 U. S. C. 1405q, 5 U. S. C. 22.)”

“11.17 *Detention; seizure; exportation; release.*  
 —(a) Merchandise of foreign manufacture which bears a trade-mark entitled to the protection of section 526, Tariff Act of 1930, and merchandise which bears a mark or name copying or simulating a trade-mark or trade name entitled to the protection of section 27, Trade-Mark Act of February 20, 1905 (15 U. S. C. 106), or section 6, Trade-Mark Act of March 19, 1920 (15 U. S. C. 107, 126), if not imported by or for the account of, or with the appropriate written consent of, the owner of the United States trade-mark or trade name, shall be detained, but not seized, until 30 days have elapsed from the date of notice to

the importer that the merchandise is prohibited importation.

(b) Whenever merchandise is detained in accordance with the foregoing provisions of this section and the written consent of the owner of the trade-mark or trade name to the importation of the merchandise is not presented to the collector prior to the expiration of the 30-day period, the merchandise shall be seized and forfeited in the usual manner, except that in any such case within the purview of section 23.25 the collector may release the merchandise, but only upon the condition that the name, mark, or trade-mark be removed or obliterated prior to the release, or that the merchandise be exported under customs supervision and without expense to the Government. If the case is not within the purview of section 23.25, the importer may petition the Commissioner of Customs, through the collector, for the release of, or permission to export, the merchandise under the same conditions.

(c) Merchandise forfeited for violation of any trade-mark law may be disposed of in accordance with the procedure applicable to other customs forfeitures, but only after removal or obliteration of the name, mark, or trade-mark by reason of which the goods were seized.

(d) If the violation is not discovered until after entry and deposit of estimated duty, the entry shall be endorsed with an appropriate notation, the duty refunded as an erroneous collection, and the merchandise disposed of in accordance with the foregoing provisions of this section. Secs. 526, 624, 46 Stat. 741, 759; sec. 27, 33 Stat. 730, sec. 3, 34 Stat. 169, sec. 18, 49 Stat. 1811, R. S. 161; 19 U. S. C. 1526, 1624, 15 U. S. C. 106, 1321, 48 U. S. C. 1405q, 5 U. S. C. 22.)”

